

Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application by)	
Qwest Communications International, Inc.)	
For Authorization to Provide In-Region, InterLATA)	WC Docket 02-148
Services in the States of Colorado, Idaho)	
Iowa, Nebraska, and North Dakota)	

Comments of the Minnesota Department of Commerce

Date: August 28, 2002

_____/s/_____
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The Minnesota Department of Commerce (MNDOC) respectfully submits these comments in response to the Commission's August 21, 2002 request for comments regarding Qwest's *ex parte* filing in Docket No. WC-02-148. Qwest's *ex parte* filing notified the Commission that it would be filing certain negotiated agreements with the states of North Dakota, Nebraska, Colorado, and Idaho. The nub of Qwest's *ex parte* filing is that it has taken and is taking a series of steps aimed toward compliance with section 252(a), even though Qwest maintains it has never been in violation of that section's requirement that all interconnection agreements be filed and approved with state commissions. According to Qwest, it has now filed agreements that it maintains do not need to be filed, and has implemented new policies to make sure that it does not in the future violate laws that it maintains it has never violated in the past. Qwest says it undertook to post these agreements on its web site with CLECs in an effort to ensure compliance with section 252(i)(pick and choose), even though it maintains its failure to make such agreements publicly available, prior to taking this action, violated no law. Finally, as the FCC's decision on Qwest's first multi-state section 271 application approaches, Qwest now volunteers to file agreements that, according to Qwest, it has no obligation to file, with state commissions. The FCC seeks comments from interested parties on Qwest's filing.

It is interesting to note that Qwest's *ex parte* promises to file currently secret agreements appear only to address the states where 271 applications are currently pending, leaving numerous CLECs without the benefit of the Act. Moreover, Qwest will not be providing pick and choose rights with respect to any terms of interconnection that Qwest terminated once the agreements were exposed by the MNDOC's complaint. In Minnesota, for example, Qwest paid Eschelon over \$7 million to terminate 4 of the 6 agreements the DOC complained of, allowing Qwest to claim that these interconnection terms and conditions are not available for pick and choose. One of the terminated agreements included the 10% discount Qwest gave Eschelon on all of its purchases from Qwest (including UNEs, tariffed services, access charges and telecommunication services other than UNEs that are regulated under the Telecommunications Act of 1996).

The Minnesota Department of Commerce filed a complaint against Qwest with the Minnesota Public Utilities Commission (MPUC) on February 14, 2002 alleging that Qwest was required to file eleven interconnection agreements Qwest entered into with CLECs, and that doing so violated 47 U.S.C. §§252(a), 252(i), and discriminated against CLECs not party to the special deals afforded a few in violation of 47 U.S.C. §251, which requires RBOCs like Qwest to provide non-discriminatory wholesale service to CLECs. In June, 2002, the record was reopened to address claims that Qwest had failed to file a twelfth agreement--an oral agreement with McLeodUSA to provide discounts of up to 10% on all services McLeodUSA purchased from Qwest.

The MNDOC believes Qwest's conduct also violates, at a minimum, checklist items 1 and 2 under 47 U.S.C. §271(c)(2)(B) and suggests that approval of Qwest's Section 271 application is not in the public interest.

Just as egregious in MNDOC's opinion, is the quid pro quo that Qwest received from the favored CLECs: complicity and complaisance from the favored CLECs with respect to Qwest's regulatory agenda, including commitments from two of Qwest's largest wholesale customers not to meaningfully participate in Qwest section 271 proceedings, and support for the merger of Qwest and U S WEST. MNDOC's complaint was referred to a state administrative law judge as a contested case proceeding. The record from MNDOC's complaint has also been imported on to the record of Qwest's section 271 proceedings in Minnesota, and will be considered by the MPUC as it relates to checklist items 1 and 2, as well as the issue of whether approving Qwest's section 271 application is in the public interest. The record being developed here is extensive, and includes thousands of pages of documentary evidence and live testimony presented at a hearing that lasted several days.

The record before the ALJ in Minnesota is now closed. Initial briefs have been filed and responsive briefs are due September 5, 2002. The ALJ is expected to issue its Findings, Conclusions and Recommendations to the Minnesota Public Utilities Commission by September 20, 2002.

Currently, the FCC will be required to issue its Order on Qwest's 271 application for Colorado, Nebraska, Iowa, and North Dakota before the ALJ in Minnesota is expected to issue his report. The DOC is also aware that these state Commissions directly affected by this first Qwest 271 petition have either deferred investigation of the secret agreements issue and/or have determined that any violation of 251/252 in that regard should not prevent or delay 271 approval in their respective state. That is the prerogative of these states. That is not the manner in which we are proceeding in Minnesota.

There is not an adequate record currently before the FCC with respect to the issues raised in the MNDOC's complaint against Qwest that would allow the FCC to render an informed judgment about whether Qwest's alleged misconduct constitutes non-compliance with checklist items 1 and 2 of section 271's 14 point checklist.

Nonetheless, the FCC's notice and Qwest's filing raise concerns that the FCC will decide the merits of some or all of the issues raised in MNDOC's complaint on the basis of a very scant record. The MNDOC would recommend that the FCC make clear that any decision it reaches on the merits of Qwest's section 271 applications now before it are based on the record developed by the respective state commissions upon which the FCC must necessarily rely heavily in making its decision. The FCC should make clear that any decision on section 271 applications currently before it do not prejudice the proceedings pending in Minnesota. The FCC should also make clear that a finding by a state commission that an ILEC that has engaged in a pattern of anti-competitive behavior and intentional violations of sections 251 and 252, particularly in order to advance its regulatory goal of achieving 271 approval, is a serious matter that may implicate Qwest's authority to provide interLATA service.